IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

RPFC.No. 237 of 2007()

MC.329/2005 of FAMILY COURT, KOZHIKODE
.....

REV. PETITIONER/RESPONDENT

VINODAN, S/O. KUMARAN, AGED 34,
R/AT VADAKKEMAVULLI, KOVUKKAL KADAVU, KALLAMALA,
VADAKARA TALUK, A MENTALLY RETARDED PERSON,
REP. BY HIS NEXT FRIEND AND BROTHER, V.M.AJITH,S/O
KUMARAN, AGED 33, R/AT VADAKKEMAVULLI, KOVUKKAL
KADAVU, KALLAMALA, VADAKARA TALUK.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS: PETITIONER

BINDU, D/O. KUMARAN, AGED 30 YEARS,
RESIDING AT NADUKANDI HOUSE, POST CHOMBALA,
AZHIYOOR AMSOM, CHOMBALA DESOM, VADAKARA TALUK.

BY ADV. SRI.SUNNY MATHEW

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. Ramkumar, J.

R.P. (FC) No. 237 of 2007

Dated: 18th September 2007

ORDER

The revision petitioner Vinodan represented by his next friend and brother, Vijith challenges the ex parte order dated 23-06-2006 passed by the Family court, Kozhikode in M.C. 329 of 2005 filed by the respondent herein namely, Bindhu. As per the ex parte order the petitioner was directed to pay a monthly maintenance at the rate of Rs. 2,000/- per month to Bindhu with effect from 17-10-2005.

2. The contention of the revision petitioner is that he had appeared before the court below through his next friend and had submitted an affidavit produced in this revision as Annexure A1 and had also produced before the Court below Annexure II certificate issued by the Superintendent, Mental Health Centre, Kozhikode to the effect that he was moderately mentally retarded with an I.Q. of 44 and having more than 40% disability. But that the court below did not consider the affidavit or the medical certificate and he was straightaway set ex - party and the

impugned order was passed.

3. In the light of the above contention, this Court directed the examination of the petitioner before a medical board to be constituted by the Superintendent of Medical College Hospital, Kozhikode and to forward the report of examination to this Court. Accordingly, a Medical Board consisting of 5 doctors examined the revision petitioner at 11 a.m. on 24-08-2007. The said report reads as follows:-

> History is obtained from younger brother vijith and from the subject himself.
>
> Born out of a non consangunous marriage. Born with cleft lip which was operated in childhood. Family history of mental illness and mental retardation reported. Brother reports sub average intellectual functioning since childhood. Studied up to 3rd standard. Poor social and adaptive functions reported. Behavioral problems like quick temperateness and impulsivity present. Gives history of no attempt from his side for cohabitation with wife due to ? Fright.
>
> On examination he is conscious, oriented and co-operative. No spontaneity. Answers to question after a long delay. Sometimes gives "I don't know" answers. Later clarifies not to all but to some questions. simple arithmetics and calculations are impaired. General knowledge is poor. No delusions or hallucinations, emotionally reactive.
>
> Able to attend daily pursuits of life with support from mother and other family members. able to attend unskilled job partly under supervision.
>
> Physical examination revealed repaired cleft lip and cleft palate. Otherwise all systems including genitals normal.
>
> Impression: Moderate Mental Retardation
> No evidence of other psychiatric disorders
> He is mentally handicapped
> No unsoundness of mind
> His mental retardation could severely impair, his capability for leading a normal marital life"

A perusal of the above report only shows moderate mental retardation. But there was no evidence of other psychiatric disorders or unsoundness of mind. He was only mentally handicapped. He was seen able to attend daily pursuits of life with the support of mother and other family members and able to attend unskilled job partly under supervision. He had repaired cleft lip and cleft palate. All other systems including genitals were normal.

4. From the above report it cannot be concluded that the petitioner suffers from mental retardation of the type made mention of in Annexure II certificate. May be, his condition might worsen in future . It is too much to hold that as on 20-5-2005 when the respondent was allegedly married by the petitioner he was under a mental morbidity of such nature as to claim immunity from the obligation to maintain his wife. If the petitioner, by reason of any mental retardation was incapable of entering into matrimony, but was set up by this next friend and other relatives to establish a nuptial bond with respondent Bindhu, those will wishers also have a duty to ensure that the marital bond is kept in tact.

5. Since the impugned order was passed ex parte, I am of the view that the petitioner should be given an opportunity to contest the maintenance application.

Accordingly, the impugned order will stand set aside and the revision petitioner will be entitled to contest the M.C. if he deposits a sum of Rs. 20,000/- (Rupees twenty thousand only) within 45 days from today. If the amount as aforesaid is not paid, the impugned ex parte order in the M.C. will stand confirmed.

This revision is disposed of as above.

V.Ramkumar, Judge.